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UNITED STATES DEPARTMENT OF AGRICULTURE

1997 APR 30 PM 1:26

BEFORE THE SECRETARY OF AGRICULTURE

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In re: ) P. & S. Docket No. D-99-9  
)  
Palmetto Livestock Inc. and )  
David C. Ellison, )  
)  
)  
Respondents ) Decision

This proceeding was instituted under the Packers and Stockyards Act (7 U.S.C. § 181 et seq.) by a complaint filed by the Deputy Administrator, Packers and Stockyards Programs, Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, alleging that the financial condition of the corporate respondent did not meet the requirements of the Act, and that the respondents wilfully violated the Act and the regulations promulgated thereunder (9 C.F.R. § 201.1 et seq.). This decision is entered pursuant to the consent decision provisions of the Rules of Practice applicable to this proceeding (7 C.F.R. § 1.138).

The respondents admit the jurisdictional allegations in paragraph I of the complaint and specifically admit that the Secretary has jurisdiction in this matter, neither admit nor deny the remaining allegations, waive oral hearing and further procedure, and consent and agree, for the purpose of settling this proceeding and for such purpose only, to the entry of this decision.

The complainant agrees to the entry of this decision.

Findings of Fact

1. Respondent Palmetto Livestock, Inc., hereinafter referred to as the corporate respondent, is a corporation whose business mailing address is P. O. Box 1622, Anderson, South Carolina 29622.

2. The corporate respondent is, and at all times material herein was:

(a) Engaged in the business of conducting and operating Palmetto Livestock, Inc., a posted stockyard under the Act;

(b) Engaged in the business of a market agency selling livestock on a commission basis at the stockyard; and

(c) Registered with the Secretary of Agriculture as a market agency to sell livestock on a commission basis.

3. Respondent David C. Ellison, hereafter Ellison, is an individual whose business mailing address is P. O. Box 1622, Anderson, South Carolina 29622.

4. Respondent Ellison is, and at all times material herein was:

(a) President of the corporate respondent;

(b) Owner of 100 percent of the stock of the corporate respondent;

5. Respondent Ellison is:

(a) Responsible for the direction, management and control of respondent Palmetto; and

(b) Engaged in the business of selling livestock in commerce on a commission basis.

Conclusions

The respondents having admitted the jurisdictional facts and the parties having agreed to the entry of this decision, such decision will be entered.

Order

Respondent Palmetto Livestock, Inc., and its alter ego, David C. Ellison, its agents and employees, directly or through any corporate or other device, in connection with its operations subject to the Packers and Stockyards Act, shall cease and desist from:

1. Engaging in business subject to the Act while insolvent, i.e. while current liabilities exceed current assets;

2. Failing to deposit in their Custodial Account for Shippers' Proceeds within the times prescribed in Section 201.42 of the regulations (9 C.F.R. § 201.42) amounts equal to the outstanding proceeds receivable due from the sale of consigned livestock;

3. Failing to otherwise maintain the Custodial Account for Shippers' Proceeds in strict conformity with the provisions of Section 201.42 of the regulations (9 C.F.R. § 201.42);

Respondents shall keep and maintain accounts, records and memoranda which fully and correctly disclose all transactions involved in their business as a market agency and as a dealer subject to the Act, including, but not limited to: (1) accounts of sale, custodial account checks and buyer's bills which identify the full name and address of the consignor or the buyer; (2) account receivable records adequate to determine an accounts receivable balance each day and the dates payments were received for cash payments; (3) records regarding how the cash payments were spent, including the petty cash; (4) a record of written general account checks; and (5) corporate records.

Respondent Palmetto Livestock Market, Inc., and its alter ego, respondent Ellison, are suspended as registrants under the Act for a period of fourteen (14) days and thereafter until they demonstrate that the corporate respondent is solvent and that the shortage in the Custodial Account for Shippers' Proceeds has been eliminated. When the respondents demonstrate solvency and that the deficiency in the custodial account has been eliminated, a supplemental order will be issued in this proceeding terminating this suspension. Respondents Palmetto Livestock, Inc. and David

C. Ellison, with the agreement of complainant, request that the company's registration be made inactive at this time.

The provisions of this order shall become effective on the sixth day after service of this order on the respondent.

Copies of this decision shall be served upon the parties.

PALMETTO LIVESTOCK, INC.

By David C. Ellison

PRES. PALMETTO LIVESTOCK INC.  
Title

David C. Ellison  
DAVID C. ELLISON

Robert P. Lusk  
ROBERT P. LUSK  
Attorney for Respondents

Jane McCavitt  
JANE MCCAIVITT  
Attorney for Complainant

Issued this 30th day of April 1999

James Hunt  
Administrative Law Judge